

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANTHONY OLIVER,	:	PRISONER DECLARATORY
Plaintiff,	:	JUDGMENT
	:	28 U.S.C. § 2201
v.	:	
	:	
BRIAN KEMP in his official	:	CIVIL ACTION NO.
capacity, Governor,	:	1:19-CV-5014-TCB-JFK
Defendant.	:	

**UNITED STATES MAGISTRATE JUDGE’S
FINAL REPORT AND RECOMMENDATION**

Plaintiff, Anthony Oliver, who states that he is confined in the Chatham County Detention Center in Savannah, Georgia, has submitted a *pro se* civil rights complaint [1] against Brian Kemp, Governor of the State of Georgia. Plaintiff complains about the State of Georgia’s “super speeder” fees [*id.*] and seeks to proceed *in forma pauperis* [2]. The Clerk of Court is **DIRECTED** to update Plaintiff’s address to show that he is confined in the Georgia Diagnostic and Classification Prison, P.O. Box 3877, Jackson, Georgia 30233.¹

¹See Notice of Change of Address, Oliver v. Cleaning by Marines, No. 3:19-cv-0023-TCB (N.D. Ga. filed Mar. 8, 2019), ECF No. 15. Additionally, the official web site for the Georgia Department of Corrections (GDC) shows that Plaintiff is confined in the Georgia Diagnostic and Classification Prison. www.dcor.state.ga.us/GDC/Offender/Query (follow “Search by ID or Case Number” hyperlink, GDC ID Number 1002060648) (last visited Nov. 18, 2019).

Section § 1915(g) of Title 28 does not allow a prisoner to bring an *in forma pauperis* civil action in federal court “if the prisoner has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” When § 1915(g) does not allow a prisoner to proceed *in forma pauperis*, the complaint should be dismissed without prejudice, and, a prisoner wishing to pursue his or her claims, must refile the action with full payment of the filing fee. See Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002); see also Mitchell v. Nobles, 873 F.3d 869, 872 (11th Cir. 2017) (“Under our precedent, when a district court denies a prisoner leave to proceed IFP under the three strikes provision, ‘the proper procedure is for the district court to dismiss the complaint without prejudice.’” (quoting Dupree, 284 F.3d at 1236)).

Plaintiff, while incarcerated, has filed at least three civil actions that have been dismissed as frivolous, malicious, or for failure to state a claim. See Oliver v. Monson, No. 0:10-cv-4218-ADM-JJG (D. Minn. Jan. 3, 2011); Oliver v. Reays Ranch Inv’rs, No. 4:10-cv-0158-JMR-PSOT (D. Ariz. July 19, 2010); Oliver v. Sloane, No. 4:10-cv-0169-JMR-PSOT (D. Ariz. June 8, 2010); Oliver v. Gore, No. 3:09-cv-2505-

BEN-POR (S.D. Cal. May 12, 2010).² Plaintiff is subject to § 1915(g) and alleges nothing that qualifies him for an exception to application of § 1915(g). This action is due to be dismissed without prejudice under § 1915(g).

Further, at the beginning of his complaint, Plaintiff falsely states that he has not filed other lawsuits in federal court while incarcerated in any institution. (Compl. at 1, ECF No. 1); see Oliver v. Square Inc., No. 3:19-cv-4110-JSC (N.D. Cal. filed July 16, 2019) (filed while in Chatham County Detention Center); Mot. for Order Declaring Plaintiff Anthony Allen Oliver to be a Vexatious Litigant, Oliver v. City of

²Plaintiff's prison numbers include the following: Chatham County Detention Center number 2019040074, GDC ID 1002060648, and California Correctional number AA-9551. (See Compl. Part 2 at 14, ECF No. 1-1 (showing Chatham County number); Notices of Change of Address, Oliver, No. 3:19-cv-0023-TCB, ECF Nos. 4, 15 (showing Chatham County and GDC numbers); Mot. for Leave to Proceed, Oliver, No. 3:09-cv-2505-BEN-POR, ECF No. 2 (showing California number and listing family members in *in forma pauperis* application).

The Court notes that Plaintiff currently is serving terms of imprisonment for his Chatham County convictions for aggravated stalking, criminal attempt, and false statements. www.dcor.state.ga.us/GDC/Offender/Query (follow "Search by ID or Case Number" hyperlink, GDC ID Number 1002060648) (last visited Nov. 18, 2019); see also www.cmsportal.chathamcounty.org/portal/ (follow "Smart Search" hyperlink, SPCR19-02076-J4) (last visited Nov. 18, 2019) (no contact order referring to family members).

Oceanside, No. 3:16-cv-0565-BAS-JLB (S.D. Cal. Sept. 21, 2016), ECF No. 42 (reviewing Plaintiff's abusive litigation history, both as a prisoner and non-prisoner).³ Plaintiff's statement that he has not filed other lawsuits in federal court while incarcerated in any institution is without any plausibility and demonstrates bad faith. Accordingly, this action also is subject to dismissal because it was filed in bad faith and qualifies as malicious. See Schmidt v. Navarro, 576 F. App'x 897, 899 (11th Cir. 2014) (affirming dismissal, without prejudice, for abuse of judicial process by failing to disclose on prisoner complaint form two prior federal actions).⁴

II. Conclusion

For the reasons stated above,

IT IS RECOMMENDED that Plaintiff be **DENIED** *in forma pauperis* status [2] and that this action be **DISMISSED WITHOUT PREJUDICE**.


³After the defendants in the Oceanside case sought to have Plaintiff declared a vexatious litigant, Plaintiff moved to dismiss the action, and the action was dismissed. Oliver, No. 3:16-cv-0565-BAS-JLB, ECF No. 61. In the United States District Court for the Southern District of Georgia, however, the Magistrate Judge recommended that Plaintiff be declared a vexatious litigant, and the district court adopted that recommendation. See Oliver v. Lyft, Inc., No. 4:19-cv-0063-WTM-CLR (S.D. Ga. Oct. 21, 2019).

⁴This Report and Recommendation provides notice to Plaintiff that his filing of this action is found to be in bad faith and malicious.

The Clerk of Court is **DIRECTED** to send a copy of the Report and Recommendation to Plaintiff at his initial address of record at the Chatham County Detention Center and his updated address of record at the Georgia Diagnostic and Classification Prison.

The Clerk is **DIRECTED** to withdraw the reference to the Magistrate Judge.

IT IS SO RECOMMENDED and DIRECTED, this 20th day of November, 2019.



JANET F. KING
UNITED STATES MAGISTRATE JUDGE